

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

KISKIDEE, LLC d/b/a/ HIBISCUS BEACH
RESORT and H2O RESTAURANT (a/k/a
HIBISCUS HOTEL and H2O
RESTAURANT),

1:09-cv-77

Plaintiff,

v.

CERTAIN INTERESTED UNDERWRITERS
AT LLOYD'S OF LONDON SUBSCRIBING
TO POLICY NO. NB043060b, unincorporated
foreign association of individuals,

Defendant.

TO: Maxwell D. McIntosh, Esq.
Sharmane Davis-Brathwaite, Esq.
Matthew L. Litsky, Esq.

ORDER GRANTING DEFENDANTS' MOTION TO STAY AND ABATE
PLAINTIFF'S CLAIM OF BAD FAITH

THIS MATTER is before the Court upon Defendants' Motion to Stay and Abate Plaintiff's Claim of Bad Faith (Docket No. 10). Because the First Amended Complaint demonstrates Plaintiff's concurrence that the bad faith claim contained in Count IV of said complaint "should be stayed and abated until such time as the underlying case relating to

the action for damages is resolved," First Amended Complaint at para. 42, this order is issued without necessity of response.

Federal Rule of Civil Procedure 42(b) allows the Court to sever or bifurcate: "For convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third-party claims." *Id.* Under this rule, courts are "afforded large discretion in deciding whether to sever claims for trial." *Miller v. Hygrade Food Products Corp.*, 202 F.R.D. 142, 145 (E.D. Pa. 2001) (citations omitted) (cited in *Nationwide Mutual Ins. Co. v. Garzone*, Civil Action Nos. 07-4767, 08-3895, 2009 WL 2996468, at *26 (E.D. Pa. September 17, 2009) (slip copy)).

In the matter at bar, the Court finds that severance of the bad faith claim is required because "in the Virgin Islands, in order to make out a cause of action for the tort of bad faith a plaintiff [is] required to show . . . the existence of an insurance contract between the parties and a breach by the insurer." *Justin v. Guardian Inc. Co., Inc.*, 670 F. Supp. 614, 617 (D.V.I. 1987). Thus, Plaintiff must prevail on Count I of its said complaint before it even can make a prima facie bad faith claim.

Accordingly, it is now hereby **ORDERED**:

1. Defendants' Motion to Stay and Abate Plaintiff's Claim of Bad Faith (Docket No. 10) is **GRANTED**.
2. Count IV of Plaintiff's First Amended Complaint is **SEVERED**.
3. All litigation relative to Count IV of Plaintiff's First Amended Complaint is **STAYED** until Count I of said complaint is resolved.

ENTER:

Dated: June 18, 2010

/s/ George W. Cannon, Jr.
GEORGE W. CANNON, JR.
U.S. MAGISTRATE JUDGE